1950

File No. S.DWR 2

Legal Department

A BRANCH

Subject:— Suits Dharwar

Civil Suit No 9 of 1948

Dattatraya Venkatesh Kulkarni minor by his next friend Govind Shrinivas Kulkarni } Plff

Vs

1) The Government of Bombay
2) Rangrao Swamirao Kulkarni } Defts.

For a declaration that the order of the Asst. Collector forfeiting lands in the village of Kumkur, taluka Shiggaon, is ultra vires and for consequential relief

Civil Appeal No. 314 of 1949

133

S. Dharwar 2 | 1950

File No.

S.DWR 2/

Gen. 36—3253—1,00,000—3-42—...

C O N T E N T S.

Legal Department File No. S.Dur.2/50.

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Dharwar.

C.S.No. 9 of 1948

D.V. Kulkarni, minor by his next friend Govind ~~plff.~~ S. Kulkarni

plff.

V/S

1) The Govt. of the Province of Bombay.

2) R.S. Kulkarni

Defts.

For a declaration that the order is ultra vires and for consequential relief.

1-66.

In the Court of the Civil Judge, Senior Division,
~~Dharwar~~. Hubli.

Civil Suit No. 9 of 1948.

Dattatraya Venkatesh Kulkarni, age 16, minor, by his next friend Maternal Uncle Govind Shriniwas Kulkarni. ...) ... .. Plaintiff.

versus

1. The Government of the Province of Bombay. -) ... .. Defendants.
2. Rangrao Swamirao Deshpande.)

The following is the written statement of Government., defendant No.1, in this suit :-

1. The Court has no jurisdiction to entertain this suit under clauses (a) and (c) of section 4 of the Bombay Revenue Jurisdiction Act.

2. The plaintiff's suit is time barred under Article 14 of Schedule I read with section 15(2) of the Indian Limitation Act inasmuch as the suit has been filed after the expiration of one year and two months from the date of the Assistant Collector's order forfeiting the plaintiff's lands.

3. The averments in paragraphs 1 and 2 are not disputed. It is submitted that the plaintiff's father Venkatesh was a party to the assistance suit decree passed on 24th April 1939 wherein he was defendant No.4. The notice of forfeiture of watan lads was served on him on 27th May 1939. The forfeiture had therefore already occurred during his lifetime and the lands could have been forfeited after 15 days from the date of the notice served upon him. The defendant denies the contention that since the assistance decrees were obtained against Ramchandra alone they could not be enforced against the suit lands. The second defendant had obtained decrees in respect of the total judi due from all the watan lands including those held by the plaintiff and his father and therefore the decretal amount was recoverable as arrear of land revenue under

section 87 of the Land Revenue Code. The provisions of section 153 as regards forfeiture apply to all the lands with regard to which the arrears were due.

4. The allegations in paragraph 5 of the plaint are incorrect and denied. The Assistant Collector's order of forfeiture of the four suits lands was not illegal and ultra vires as alleged by the plaintiff but was a valid and proper order under section 153 of the Land Revenue Code and under rule 123(d) of the Land Revenue Rules.

5. It is also denied that judi for past years could not be recovered under the Land Revenue Code. The defendant submits that under the provisions of sections 86, 87, 150 and 151 of the Land Revenue Code, judi for past years could also be recovered. With regard to notice of forfeiture served on Venkatesh, the defendant submits that the total amount due from the lands in possession of the plaintiff ~~vacant~~ up to 1941 only was more than Rs.538/- in respect of judi and potgi. With regard to the allegation that after the death of Venkatesh a fresh notice should have been served upon the plaintiff, it is submitted that the notice of forfeiture had been served on Venkatesh during his lifetime on 28th June 1939 and the declaration of forfeiture could have been made at any time after 15 days from that date. The forfeiture had already been incurred during the lifetime of Venkatesh and it was not necessary to serve any fresh notice upon the plaintiff.

6. The defendant further denies that judi is not rent or land revenue or that the judi or potgi is not recoverable under the Land Revenue Code. The kadim judi payable to the second defendant is in the nature of quit rent recoverable as arrears of land revenue under the Land Revenue Code.

7. The defendant further submits that the suit lands were forfeited not merely for the payment of kadim judi but also for the arrears of potgi payable to the officiating Kulkarni. Potgi dues were due from the entire holding

and had not been apportioned. More over, there had been persistent defaults on the part of the watandars from 1927-28 onwards and the arrear had been mounting up year after year. In these circumstances the defendant submits that the order of forfeiture of the watan lands made by the Assistant Collector and confirmed by the Collector and the Revenue Tribunal was correct and justified.

8. The defendant denies all the other allegations made in paragraphs 5 and 6 of the plaint.

9. With regard to the averments in paragraph 9 of the plaint, it is submitted that the payment of the arrears by the plaintiff several years after the forfeiture had occurred and the land had been forfeited does not give him any legal right to the restoration of the lands. It lies within the absolute discretion of Government whether the lands should be restored or not.

10. The plaintiff has no cause of action against Government and none has arisen in his favour. His allegations to the contrary in paragraphs 7 and 8 are not admitted.

11. The plaintiff is not entitled to any relief. It is therefore submitted that the suit is not maintainable and may be dismissed with costs.

Dated this .....

District Government Pleader.

I, , District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 11 above is true according to the information received and believed to be true. This verification is made at on the day of 1948.

District Government Pleader, Dharwar.

C 75

Dharwar Civil Suit No. 9 of 1948.

In this case certain kadim Kulkarni watan lands were forfeited under section 153 of the Land Revenue Code on account of the holder's failure to pay the dues on account of kadim judi payable to the Inamdar and potgi payable to the officiator. The lands are situated in an Inam village. The watandars were liable to pay kadim judi to the Inamdar (defendant No.2) and the officiator's potgi to Government. These dues were not paid for a number of years and the Inamdar could not recover anything although he applied for assistance under section 87 of the Land Revenue Code and obtained the decrees. At last in 1941 the Assistant Collector passed an order under section 153 of the Land Revenue Code forfeiting all the watan lands for arrears of the kadim judi and potgi and restored them to the Inamdar. under rule 123(d) of the Land Revenue Rules. The Inamdar had undertaken to pay the officiator's potgi also. The plaintiff who was the holder of four of the watan lands has filed this suit for a declaration that the forfeiture is ultra vires and for consequential relief.

2. The suit can be defended. The orders passed by the Assistant Collector and confirmed by the Collector and the Revenue Tribunal are in accordance with the relevant provisions of the Land Revenue Code and Rules. The defence of the suit may be sanctioned on the lines of the accompanying brief. A draft written statement is put up for approval.

RLA ALR

RLA 29/9

RLA 27/9/48

RECEIVED IN REVENUE DEPARTMENT
on 29-9-48.

7.10.48

No. 9211 d. 29/9/48.

L.D.
4 OCT 1948

L. no 104/48.

From,

B.R.Mathad, B.A.LL.B.,
Off. S.G.Pleader, Hubli.

To,

The Remembrancer of Legal Affairs,
Bombay.

Subject :- L.C.Suit No.9 of 1948 of Hubli Court.

Sir,

I have the honour to submit as under:-

The deft's written statement, objections and case papers in the above suit have been sent by me along with my letter No.68/48 dated 24-7-1948 for approval and sanction. Since the Written - Statement and objections were not filed by me on - 17-8-1948 and the same were filed by deft 2 before that date the courtwas not pleased to grant any - more time to Government and the suit has been fixed for issuew on 18-10-1948.

12430
5-10-48

I request you Sir, to send back the draft W.S. and objections with necessary amendments sanction before 18-10-1948, so that I shall apply for setting aside the exparte order against - Government and put in the W.S. and objections on that date. I request you to treat this matter as very - urgent and comply with my request before 18-10-1948.

Hubli,
30-9-1948

Yours Faithfully,

B.R.Mathad.

Sub-Government pleader,
Hubli.

Please see letter from the Sub C Pleader, Hubli. A Copy of the written statement & brief have already been sent to him by this office memo No 9383 dt 5th 10-48. This letter, therefore needs no action

6/10.

A.S. I wish Mrs has dealt with the matter in this case. The suit is pending in the Hubli Court. The brief should however have been sent to the Sub JP Hubli. We cannot do anything further than forward this letter to the Sub-JP Hubli.

6/10

No.L 88 of 1949, dated 5-10-1949
Office of the Sub Govt Pleader,
Hubli.

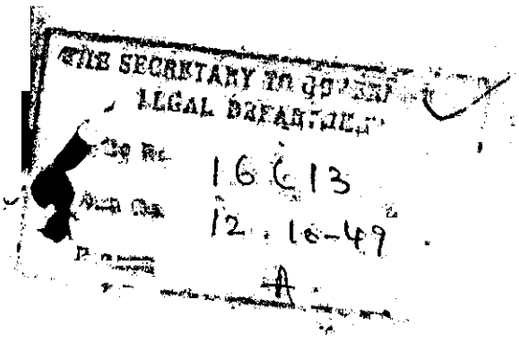
To

The Remembrancer of Legal Affairs,

Bombay.

Subject :- L.C.S.No.9 of 1948 on the file of the Civil Judge, Senior Division Hubli.
R.L.A.'s Memo No.9383 dated 5-10-48

Sir,



In connection with the above mentioned subject, I have the honour to inform you that the suit was disposed of in favour of Government by the Civil Judge, Senior Division, Hubli on 13-7-49.

An uncertified copy of judgement and decree is sent herewith for your perusal.

Yours faithfully,
Sub Govt Pleader.

16613
12-10-99

~~Submitted with hrs C.S. Civil Suit No. 948)~~
~~The suit - Govt Pleader, Hubli has forwarded a copy of Judgment & Decree~~
~~The decision is in favour of Govt.~~

~~DR~~
~~HH~~
~~SH~~

Legal dept.

Please see overleaf a letter from the Govt Pleader, Hubli intimating the result of Civil Suit No. 948 and forwarding a copy of judgment therein. The suit has been dismissed with costs. The result of the suit may be recorded by a formal G.O. after the printed copies of the G.R. sanctioning the defence of the suit are received from the press.

SSP
8/11
9

The GR is pending with the Press for nearly a year. The Press may be expedited.

WJ
P.A. 9/11

RLA
10/11

Received on 19-1-1949.
Registered on - d o -
Decided on 13-7-1949.
Duration - 1 year, 5 months and 24 days.

In the Court of the Civil Judge, Senior Division, At Hubli. Ex.56,

Long Cause Civil Suit No.9 of 1948.

Pleaders :-

Mr.N.H.Koppikar.

Dattatraya Venkatesh Kulkarni, Hindu, minor aged 16, by his next friend maternal uncle Govind Shrinivas Kulkarni, Hindu, age 38, agriculturist of Nagarhalli Taluka Navalgund..... Plaintiff.

against.

Mr.B.R.Mathad.
Mr.N.K.Dixit.

1. The Government of the Province of bombay.
2. Rangarao Swamirao Deshpande, Hindu, Watani wahiwat, age 60, residing at Aladakatti, Taluka Hangal.

Claim Rs.65/- for both purposes

The plaintiff begs to state as under :-

1. Kunkur is a surveyed Inam village in Shiggao Taluka of Dharwar District. Defendant 2 Rangrao Swamirao Deshpande is the Khatedar Inamdar of the said village. Ramachandra Baburao, Hanmant Baburao Kulkarni and Venkatesha Baburao Kulkarni were the three sharers of the Kadim Kulkarniki watan of the said village.

2. The 111 lands mentioned in the plaint were

comprised in the Kulkarniki watan. The said Ramachandra was the Khatedar thereof originally; he Hanmaant and Venkatesh partitioned these and other properties in three equal shares in the year 1917 by a partition deed dated 3-4-1947. At this division, S.Nos.14, 41/3 and 153/2 out of the above said survey numbers fell to the share of Venkatesh, who made exclusive wahiwat thereif till his death in about August 1940. Of these four survey numbers, Nos.14,41/3 and 153/2 stood in his name in the Record of Rights since the partition till the date of his death; Survey No.44 however though nominally continued in the name of Ramachandra Khatedar was since the time of partition in the actual possession and wahiwat of Venkatesh down to the date of his death. Ramachandra and Hanmant as well took exclusive possession of the lands that fell to their respective shares and made seperate wahiwat thereof.

3. Kadim Inam Judi in respect of the above said lands was payable to the Khatedar Inamdar the said Rangarao. He knew of the said partition between Ramachandra, Hanmant and Venkatesha and was therefore recovering seperately from each of them, the judi that was payable in respect of the shares of each of them. The said judi remained in arrears for a few years and Rangarao filed Assistence suits i Shiggaon Mamlatdar's Court for recovery thereof against Ramachandra only. Venkatesha was not added as a party defendant therein and a few assistance decrees were obtained by Ranagarao against Ramachandra only for recovery of the said Judi arrears between 1935 and 1939. Inexecution of the said decrees, the Assistant Collector, II Division, Dharwar, ordered that the above said lands including the four in the exclusive possession and wahiwat of Venkatesha should be forfeited and restored to the

said Inamdar Rangarao in satisfaction of the arrears of Judi as ordered in Assistance suits. This order was passed on 3-3-1941,

4. Venkatesha was the father of plaintiff minor Dattatraya and he was dead in about August 1940 long before the date of the Assistance Collector's said order. Since the death of his father, Dattatraya came in possession of the four lands, S.Nos. 14, 41/3, 44 and 153/2 and was making exclusive wahiwat of them. Survey No.44 which had continued in Ramchandra's name inspite of partition came to be entered in Dattatraya's name on his father's death, and as a result of the enquiry held by the Mamlatdar. Pursuant to the Assistant Collector's order and on 30-5-1941, the Circle Inspector of Shiggaon gave notice to Dattatraya that the said four lands in his possession would be delivered into the possession of Rangarao. The notice was served on 15-5-1941 ; He came to know of the said order of forfeiture for the first time only on 15-5-1941 and till then, he knew nothing whatever of the circumstances that had led to the said order of forfeiture. He made an appeal to the Collector of Dharwar District against the said order. But it was summarily and exparte dismissed on 18-11-1943, against this order of dismissal, he filed an appeal before the Bombay Revenue Tribunal with the result that the Tribunal held the Assistant Collector's order to be correct and dismissed the appeal by its order dated 15-3-1947.

5. The said order of forfeiture of the said ~~lands~~ four lands survey Nos.14, 41/3, 44 and 153/2 and the restoration thereof to Rangarao was and is wholly illegal and ultra vires; it is therefore inoperative and void. Inspite of Rangarao's knowledge of the

partition between the said three brothers and his actual recovery of Kadim Judi ~~fromxthreexxbrothersxandxhisxactual~~ from each of them in three equal shares for several years in the past, his conduct in filing the said Assistance suits and obtaining decrees against Ramachandra alone amounted to waiver of his rights and remedies against Venkatesha and to a release of the latter at least in respect of the amount covered by the said decree; it therefore estopped him from enforcing the said decrees either against Venkatesha or his said lands. The Assistance suits and decrees themselves having been for recovery of judi of past years not allowed by the Land Revenue Code were bad in law and the said decrees could not legally be executed by the Revenue Authorities against the said lands. The decrees having been passed against Ramachandra alone, their execution against Venkatesha or the said four lands was wholly bad in law. Notice of forfeiture was not duly served on Venkatesha. Notice served on him was in respect of only Rs.24- 2-0 as being due from him and order of forfeiture was for recovery of a very much bigger amount. Notice of forfeiture was not in respect of recovery of arrears of potgi due to the officiating Kulkarni and the order of forfeiture was in respect of recovey of the alleged potgi arrears as well. The judi was not rent or land revenue and neither judi or potgi having been payable to Government, the lands could not legally be forfeited. The notice of forfeiture expired on the death of Venkatesha and a fresh notice was necessary to be served on Dattatraya which was not done. The lands ordered to be forfeited and forfeited were much more than was necessary for the recovery of the arrears. No notice was given either to Ramachandra, who was the sole representative watandar nor to Venkatesha to render personal service in default of payment of potgi

15

an only on refusal to serve, the lands could be attbent resumed. The dues payable by Venkatesha lapsed on his death and the lands which were watan lands could not be proceeded against or forfeited after his death. The dues were all beyond time both under the general law and Land Revenue Code. The said four lands were given by Venkatesha to ryots on advance lease on condition that they should pay the Inamdar Rangarao the Judi due to him and the tenants should have been given notice to pay which was not done. The order of forfeiture was in respect of recovery of more money than was shown in the notice of forfeiture. The notice of forfeiture was again not legally issued, published or served. The Collector had ordered the Assistant Collector to take legal steps only if the decretal amount could not be recovered without resort to coercive measures and this order having been passed by him after the death of Venkatesha, the Asstt. Collector should have called upon ex Dattatraya to pay up the dues before further steps as indicated by the Collector were taken which the Assistant Collector did not do. Dattatraya's name had been entered in the Record of Rights even before the Assistant Collector's order of 3-3-1941. The Assistant Collector was wrong in holding that the amount was irrecoverable. The Revenue Tribunal was wrong in ignoring all the above points and should have considered many more arising in the case. It was wholly wrong in assuming that the forfeiture was ordered for the recovery of potgi dues. The notice of forfeiture and the order of forfeiure were and are bad in law, in various ways. The lands were not liable to forfeiture. The whole action of the Revenue authorities from the start to the finish offended and offends against the

various iperative provisions of the Land Revenue Code, Watan Act and other Acts and the Rules made thereundor. The elements necessary to entail a forfeiture were and are absent in this case.

6. The order of forfeiture and of restoration of the said four lands having been void and in-operative as mentioned herein before, neither the Government nor any of its executive officers has the right to dispossess Dattatraya of the said lands nor have they or any of them any right to obstruct him in his quiet and peaceful enjoyment and wahiwat thereof. Since the Tribunal has dismissed his appeal by its order dated 15-3-1947 and confirmed the Assistant Collector's order of 3-3-1941, the Government through its executive officers is about to dispossess him of the said lands for delivering them to Rangarao and obstruct him in his wahiwat thereof. A suit has therefore become necessary against the Government of the Province of Bombay and the said Rangarao for a declaration that the said lands were and are not liable to forfeiture in execution of the said assistance decrees and or for recovery of arrears of potgi and that the said order of forfeiture and restoration itself is illegal, ultra vires void and inoperative and for a permanent injunction against them not to obstruct Dattatraya in his wahiwat thereof nor to dispossess him of them.

7. The plaintiff prays for a declaration that the Assistance Collector's said order dated 3-3-1941 directing forfeiture and restoration of the said lands of Kunkur village in Shigaon Taluka viz., S.Nos.14, 41/3, 44 and 153/2 is ultra vires, illegal, inoperative and void be pleased to grant a permanent injunction to the defendants restraining them from obstructing and interferring with the plaintiff's possession

and wahivat thereof in any wa and costs.

8. The defendant 1 by their written statement Ex.30 contends as follows :-

9. This Court has no jurisdiction to entertain this suit under clauses (a) and (c) of section 4 of the Bombay Revenue Jurisdiction Act.

10. The plaintiff's suit is time barred under Article 14 of Schedule I read with section 15(2) of the Indian Limitation Act in as much as the suit had been filed after the expiration of one year and two months from the date of the Assistant Collector's order forfeiting the plaintiff's lands.

11. The averments in paragraphs 1 and 2 are not not disputed. It is submitted that the plaintiff's father was a party to the assistance suit decree passed on 24th April '89 wherein he was defendant No.4. The notice of the forfeiture of watan lands was served on him 27th May 1939. The forfeiture had therefore had already occured during his life time and lands would have been forfeited after 15 days from the date of the notice served opun him. The defendant denies the contention that since the assistance decrees were obtained against Ramachandr alone they could not be enforced against rhe suit lands. The second defendant had obtained decrees in respect of the total judi due from all the watan lands including those held by the plaintiff and his father and therefore the decretal amount was recoverable as arrears of lands revenue under section 87 of the Land Revenue Code. The provisions of section 153 as regards forfetire applied to all lands with regard to which the arrears were

dxx. 12. The allegations in paragraph 3 of the plaint are incorrect and denied. The Assistant Collector's order of forfeiture of the four lands was not illegal and ultravires as alleged by the the plaintiff but was a vlid and proper order under section 153 of the land Revenue Code and under rule 123(d) of the Land Revenue Code.

13. It is also denied that judi for past years could not be recovered under the Land Revenue Code. The defendant submits that under the provisions of sections 86, 87, 150 and 151 of the Land Revenue Code, the judi for past years could also be recovered. With regard to notice of forfeiture served on Venkatesh the defendant submits that the total amount due from the lands in possession of the plaintiff upto 1941 only was more than Rs.538/- in respect of judi and potgi. With regard to the allegations that after the death of Venkatesh a fresh notice should have been served upon the plaintiff, it is submitted that a notice of forfeiture had been serged on Venkatesh during his life time on 28th June 1939 and the declaration of forfeiture could have been made at any time after 15 days from that date. The forfeiture had already been incurred during the life time of Venkatesh and it was not necessary to serve any fresh notice upon the plaintiff.

14. The defendant further denies that judi is not rent or Land Revenue or the judi or potgi is not recoverable under the Land Revenue Code. The Kadim judi payable to the second defendant is in the nature of quit rent recoverable as the arrears of land revenue under the Land Revenue Code.

15. The defendant further submits that the suit

lands were forfeited not merely for the payment of kadim judi but also for the arrears of potgi payable to the officiating Kulkarni. Potgi dues were due from the entire hold ng and had not been apportioned. Moreover there has been persistent defaults on the parts of the watandars from 1927-28 onwards and the arrear had been mounting up year after year. In these circumstances, the defendant submits that the order of forfeiture of the watan lands made by the Assistant Collector and confirmed by the Collector and the Revenue Tribunal was correct and justified.

16. The defendant denies all the other allegat on made in paragraph 9 of the plaint. It is submitted that the payment of the arrears by the plaintiff several years after the forfeitre had occured and the lands had been forfeited does not give any legal right to the restoration of the lands. It lies with n the abs lute discretion of Government whether the lands should be restored or not.

17. The plaintiff has no cause of action against Government and none has arisen in his favour. His allegation to the contrary in paragraph 7 and 8 are not admitted.

18. The plaintiff is not entitled to any relief. It is therefore submitted that the suit is not maintainable and may be dismissed with costs and the interim injunction granted to plaintiff be vacated.

19. The defendant No.2 by his written statement Ex.19 contends as follows :-

20. The claim made by the plaintiff in the

suct is neither true not tenable.

21. The contents of para 1 of the plaint are substantially true. The three persons mentioned therein had it apprears, partitioned the property between themselves, but the partition can not bind the defendants. So far as the defendants are concerened, the prepresentative watandar Ramachandra alone was responsible for the dues.

22. The lands mentioned in para 2 of the plaint are watan properties assigned for the Kulkarnki services. The plaintiff has submitted ~~xxxxxxx~~ to state that the lands are assigned for services The plaintiff should prove the partition and the partition deed as alleged in the said para, As stated in para 2 above, the partition is not binding on the defendants. This defendant d es not admit that Survey No.44 fell to the share or was in the enjoyment of the plaintiff.

23. The facts mentioned in para 3 of the plaint are mostly true. Ramachandra was a man primarily responsible for pay ng judi for this defendant. The right proceed against him alone cannot be effected in law, even though the defendants accepted a part of the dues from the other two persons. The judi was continuously in arrears. The Assistance suits were rightly filed by this defendant against Ramachandra alone. As a matter of fact, this defendant did not recover his dies from any body else, till the passing og the forfeiture order.

24. The contents of para 4 of the plaint are mostly not true. Plaintiff fathers, though he had died by the time the order of forfeiture was passed, was living when the forfeiture notice was

28/21

issued. The notice had actually been served on Venkatesh. It is not true that the plaintiff came to know of the forfeiture on 15-5-1941; his next friend knew of the roceedings all along. It may also be noted that when the appeal proceedings were pending before the Commissioner, the plaintiff was actually given an opportunity to pay off the dues.

25. The contents of para 5 of the plaint are not true. The order of forfeiture is perfectly legal and not ultra vires. It is neither inoperative nor void. This defendant 2 only vaguely knew about the partition from the entries in the Record of Rights. It is not true that he recovered Kadia judi from each of three brothers in equal shares. The assistance suits were filed against Ramachandra alone as he was the representative watandar and the Khatedar, and as such was responsible for the payment of the dues running with the lands. It is wrong to say that the suits against Ramachandra amounted to any waiver. The whole watan property was liable. There can be no estoppel against this defendant. The assistance decrees were quite legal and executable by the Revenue authorities against the lands. Notice of forfeiture was only served on Venkkatesha. Theplaintiff is put to strick proof of any irregularities on the services of notice and also of any ~~xxxxxxxxx~~ loss to him due to such irregularities. In any case this defendant has not been the cause of any irregularity. It is wrong to say that the lands could be legally forfeited in respect of the arrears of judi or potgi. It was not necessar

to issue a notice to the plaintiff as the notice of forfeiture has already been served on his father. No notice of personal service was necessary to be given. The dues payable by Venkatesh did not lapse on his death, as the dues were running ith the lands. No notice to tenants was necessary and the plaintiff is put to strict proof of the alleged agreements by Venkatesh with the tenants which even if proved, cannot bind the defendants. The notice of forfeiture was legally issued, published and served. The various allegations in para 5 of the plaint against the legality of the order of forfeiture are all untrue and untenable. The action of the revenue authorities and their decision are all just, legal and valid. The order of the Revenue Tribunal is correct and legal. The Revenue authorities had no other option and so had to forfeit the lands due to contumacious default in paying of the dues. It is not correct to say that the lands ordered to be forfeited were much more than necessary for the recovery of arrears.

26. The action taken by the revenue authorities after the decision of the Revenue Tribunal is correct and legal. The plaintiff is vainly attempting to postpone possession being given to this defendant.

27. The cause of action is wrongly stated. No cause as arisen to the plaintiff.

28. The contents of para 9 of the plaint are not true. The plaintiff failed to produce money as ordered by the Commissioner.

29. Only the portion of the money was produced by the plaintiff 's next friend. This defendant

3123

has not accepted the amount, There is no reason of equity of justice in favour of restoring any of the lands to the plaintiff. The other allegations in para 9 of the plaint are denied.

29. The claim in the suit is obviously barred by the provisions of the Revenue jurisdiction Act

30. The claim is not in time. The right to challange the order arose when the father of the plaintiff was served with the notice of forfeiture

31. The plaintiff is not entitled to any relief. The plaintiff suit should therefore be cismissed with costs.

32. The following issues were framed at Exh.40

1. Whether the suit is barred by the Revenue Jurisdiction Act ?
2. Whether the suit is barred by Limitation ?

My findings are :-

1. Yes.
2. Yes.

Reasons.

33. The plaint does not only mention facts but adduces arguments also in support of the plaintiff's case which is not justified by the law of the pleadings. It has become therefore necessaru for me to briefly state the facts which have led the plaintiff to this suit. They are as follows :- Ranagarao Deshpande, the defendant No.2 in the suit i the Khatedar Inamdar of the Inam village of Kunkur. Ramacha dra Babura Kulkarni is the sole representative Kulkarni of the village. Some lands have been assigned for the remuneratio

of the Kulkarni service and these lands stand in the Record of Rights in the name of this Ramachandra and his two brothers Hanmant and Venkatesh. Venkatesh is the plaintiff's father. He died in August '40. There were two liabilities on these lands, the Kadim judi payable to Inamdars and the potgi of the Kulkarni payable to Government. The holders of these landes dtodd in arrears of judi and committed default in payment of potgi also for several successive years. Therefore the Inamdar filed Assistance suits every year from 1928 to 1938 for the arrears of the judi payable tohim and obtained decrees but found it impossible to recover any thing under those decrees. He therefore moved the authorities that the amount should be recovered by forfeiture of the holdings of these Kadim Inams and he undertook to pay the potgi of the village officer including the arrears. The Prant Officer then started proceedings to recover the Inamdar's dues and issued notices of forfeiture. The Kadim Inamdars in the meanwhile asked for time to pay up the arrears. The Prant Officer referred the matter to the Collector, and said that there was noother way of recovering the amounts accept by forfeiture and informed the Collector that the Inamdars xxxx was willing to execute a bond to pay the potgi of the Kulkarni and suggested that the lands should be forfeited and transferred to the Inamdar. The Collector having agreed, the Inamdar executed the bond undertaking to pay the p tgo fees and the Prant Officer passed orders transferring the lands to the Inamdar under rule 123 D of the Land Revenue Rules in satisfaction of the arrears of Judi. That order of forfeiture was passed by the assistance Collector on 3-3-1941. Plaintiff father Venkatesh was dead before that order of forfeiture was passed. He dies

25

some time in August 1940. Four lands had been assigned to the plaintiff's father's shares in 1917 partition between himself and his brothers Ramchandra and Hanmant. They were S.Nos.14, 41/3, 44 and 153/2. After the order of forfeitu was passed by the Assistant Collector the notice of forfeiture was served on the plaintiff on 15-5-1941, till then, it is the plaintiff's case, he knew nothing the of the circumstances under which the order of forfeiture came to be passed. He preferred an appeal to the Collector against the order of the Assistant Collector but it was dismissed and against that order of the Collecto he preferred an appeal to the Bombay Revenue Tribunal. But the Tribunal also dismissed the appeal on 15-3-1947 and confirmed the Assistant Collector's order dated 3rd March 1941. This order of the Assistant Collector, the plaintiff alleges, is ultra vires, illegal, inoperative and void and he has therefore brought this suit for declaration accordingly an his other prayer is an for an injunction against the defendants not to obstruct or interfere with his wahiwat. On various grounds the plaintiff is challenging the order of the Assistant Collector. Defendant No.1 in this suit is the Government of the Province of Bombay and Rangarao the Inamdar is defendant No.2 in the suit.

34. The defendants resists the plaintiff's suit on the several grounds. They contend interalia that the plaintiff' suit is barred under sections 4(a) clauses 1 and 4 of the Bombay Revenue Jurisdiction Act and that it is also barred under Article 14 of the Limitation act. I will therefore first consider the bar of section 4 of the

Revenue Jurisdiction Act.

35. It is common ground that the lands in suit are service Inam lands. In para 1 of the plaint these lands are described to be Kadim Kulkarni Watan, which nature of the property is repeated in para 2. In the alienation register, the certified copy of which the defendants have produced at Ex.h43, these lands are described to fall under class 6 which refers to the village servants useful to Government and in column 11, the tenure is stated to be under Bombay Act No.3 of 1874. Therefore, there is no doubt that the lands in disoute relate to the property appertaining to the office of the a hereditory officer appointed or recognised under Bombay Act III of 1874. Now in para 5 of the plaint it is alleged that the order of forfeiture and the restoration thereof to Rangarao defendant 2 is illegal and ultra vires and void. At the end of para the averment made is that th action of the revenue authorities from start to finish offends against the various provisions of the Land Revenue Code, the Watan Act and other Acts and Rules made there f. In para 6, the averment is that sin e the order of forfeiture and the restoration of the landd is altogether void, neither the Government nor any of its executive officers has the right t dispossess Dattatraya (plaintiff) of the said lands nor have they or any of them any rights to obstruct him in his peaceful enjoyment of the property..... The government though its executive officers is about to dispossess him of the said lands for delivering them to Rangarao and obstructing him in his wahiwat. a suit has therefore has become necessary against the Government of this province of Bombay and Rangarao for declaration t.....

and injunction against them..... not to dispossess him ". In para 10 of his prayer is for a permanent injunction against the defendants after declaring that the Assistant Collector's order is void. It is clear from these averments made in the plaint that the suit is mainly against Government. Pangarao won't get the lands unless the Government dispossess the plff and delivers them to him. Therefore, the question of determination is whether a suit against the Government for a declaration that the order of Assistant Collector in respect of the lands held for service under Bombay act III of 1874 declaring their forfeiture and restoration thereof to the Watandar is not barred under section 4(a) coluses 1 and 4 of the Bombay Revenue Jurisdiction Act. Section 4(1) says that no Civi Court shall entertain a suit in respect of claims against government relating to any property appertaining to the office of any hereditary officer appointed or recognised under the Bombay Act No.III of 1874 or any other law for the time being in force or of any other village officer and coluse 4 refers to claims against Government relating to lands held..... for service. It was urged on behalf of the plaintiff on the otherhand that the decrees for arrears of judi having been obtained against Ramachandra, plaintiff's lands could not be held liable for payment of judi. The Assistant Collector passed the order of forfeiture of the plaintiff's lands not under the Watan Act but under section 153 of the Land Revenue Code. It should be noted the plaintiff alleges that the order of forfeiture had nothing to do with the

arrears of potgi payable to the officiating Kulkarni though there were two liabilities on the lands, na ely, the payment of judi to the Inamdar and the potgi of the Kulkarni payable to Government. Xx Therefore xxx clauses 1 of section 4 A of the Bombay Revenue Jurisdiction Act which in turn relates to a property appertaining to the office of the Hereditary Officer under the Watan Act is no bar to the plaintiff' suit. Since the plaintiff has incurred f rfeiture in proceedings for the recovery of arrears of judi, the plaintiff's suit may well be taken to be governed by section 4(c) of the Act. In para 9 of the plaint, plaintiff alleges to have paid into the treasury the arrears of judi of Rs.217-9-0 and so now nothing is due from him and therefore the order of forfeiture should be revoked and the lands restored to him. In the course of his argument Mr.Koopikar, the learned Advocate for the plaintiff stated that the notice of forfeiture served on the plaintiff's father mentioned the arrears of judi being only Rs.24- 2-0. Therefore here thereis also a contest about the amount of dues payabel by the plaintiff's father and therefpre such a suit can perfectly be entertained by the Court under section 5 of the Revenue Jurisdiction Act. In my opinion, none of these contentions are sound and therefor they cannot be accepted.

86. The plaintiff's argument that because thee order of forfeiture was passed under the provisions of the Land Revenue Code and not under the Watan Act and therefore section 4(a) clause 1 of the Act is not applicable is hopelessly unsound. There can be no doubt that the plaintiff's suit is in respect of a claim relating to property appertaining

appertaining to the office of the Hereditary Officer recognised under the Watan Act and the claim being primarily against the Government the plaintiff's suit clearly barred under section 4(a) clause 1 of the Act and it is also barred under clause 4 of section 4(a) because these lands are held for service. Now the plaintiff's suit is for a declaration that certain order of an Assistant Collector is illegal and void and he also claims an injunction against the Government not to disturb his wahiwat. Therefore, his suit cannot come under section 4(c) of the Act because it speaks of " claim connected with or arising out of any proceedings for the realisation of Land Revenue ".

37. Plaintiff's contention that the order of forfeiture arose out of proceedings taken for the realisation of arrears of Judi and not also for the arrears of potgi is not at all tenable. Now let us see what the position was when the order of forfeiture was passed. The Assistant Collector had made a report to the Collector on 29th Nov. 1939 i.e., 5 months after the assistance decrees that the total dues payable to the Inamdar on account of the Kadim Inam Judi, for which the assistance decrees had been obtained by the Inamdar amounted to Rs.521/11/8 and that the arrears on account of potgi upto 30-4-1938 amounted to Rs. 77- 2-0. Thus the total amount of liability on the 11 lands was Rs.1293/-, vide Ex.35. Now the total amount due from the lands in the possession of the plaintiff was Rs.217- 8-0 for arrears of Judi and Rs.421- 5-4 for arrears of potgo upto the year 1945. Therefore the total amount recoverable from the plaintiff in 1945 was Rs.

Rs.638-14-4 and even if the arrears were reckoned upto 1941 only, the year in which the order of forfeiture was passed the total amount of judi and potgi would be more than Rs.538/-. I have taken these figures from the order of the Revenue Tribunal Ex.53 and they are not contested by the plaintiff. Now before the Revenue Tribunal ot iwas urged on kx behalf of the plaintiff that when the amount of arrears due from him was at the most Rs.538/- odd when the order for forfeiture was made, forfeiture of only one or two of the lands would have been sufficient for the refovery of the arrears and that the forfeiture of all the four lands was a breach of the provisions of rule 121 of the Land Revenue Rules. This contention was not accepted by the Tribunal because in their opinion the lands had been forfeited not merely for the payment of the judi and this had not been apportioned between the threee sharers and that so far as the arrears of potgi were concerned they were dur from the entire holding and therefore it was not possible to apportion them seperately between the lands. Therefore, it was not for the arrears of judc that the order of forfeiture was passed. The plaintiff's father stood in arrear both as regards judi and potgi, which amounted Rs.538/-. Now the question before the Assistant Collector was as to how these arrears should be recovered. But these arrears could be recovered only as arrears of Land Revenue, and therefote the provisions of section 153 of the Land Revenue Code were restored to when the collector found that there was no other way to recover the arrears except under coercive measures. Now in para 5 of the plaint also, it is clearly admitted that the order of forfeiture was in res ect of recovery of the alleged potgi arrears as well. Yet, Mr.Koppikar argued that it

was inadvertently stated in the plaint that the order of forfeiture was in respect of the potgi arrears as well. It that was so, then he should have amended the plaint. But he is not prepared to do that, which shows the utter hollowness of his contention that the order of forfeiture was passed only in respect of the payment of arrears of judi. That it was not so is further clear from para 9 of the plaint where it is distinctly stated that " he (plaintiff) is further ever ready and willing to pay the whole arrears of pa potgi and to pay the same in future as and when it falls due. Now if as the plaintiff contends that the arrears of judi payable by his father were only Rs.24- 2-0, then he could very well have paid that small amount and avoided forfeitu and if he did not do it, then it was very foolish of his to have incurred for-feiture for such a small sum. The fact however remains that that was not so. The plaintiff's stood in arrears of judi and potgi and they amounted to Rs.538/-, and it was for the recovery of these arrears that proceedings under section 153 of the Land Revenue Code were started by the Assistant Collector and plaintiff is now challenging the order of the Assistant Collector passed on 3-3-1941 on the ground that it is illegal, inoperative and void. Therefore here therein no question o contest x about the amount recovered as Land Revenue and s section 6 of the Act which speaks of " suits against Government to contest the amount claimed or paid under protest orrecovered as Land Revenu on the ground that such amount is in excess of the amount authorised etc etc " has no applicati at all.

38. I, therefore hold for these reasons that the plaintiff's suit is barred under section 4(a) caluses 1 and 4 of the Bombay Revenue Jurisdiction Act.

39. The other issue is about limitation. I find that the plaintiff's suit is barred under Article 14 of the Limitation Act. That article provides for one years's period from the date of the order which is sought to be set aside. It is urged on behalf of defendant No.1 that the suit is barred by limitation as it is not brought within one year from the date of the Assistant Collector's order of forfeiture. They contend that time taken up by the plaintiff in appealing to the Revenue Authorities and the Revenue Tribunal cannot be exoluded in reckoning the period of limitation and in support of this contention Ganesha Vs. Secretary of State, 44 Bom. 451 is relied upon. It was however urged on behalf of the plaintiff that the order of forfeiture was served on the plaintiffon 15-5-1941. By that time his father was dead. The plaintiff was a minor when the order was served on him, and therefore he is protected under section 6 of the Limitation Act. There is no substance in the plaintiff's contention. In my opinion, the plaintiff's suit is clearly barred by time. Now the plaintiff may have been served with the order of forfeiture on 15-5-1941 after the death of his father. But it was not necessary to issue notice of forfeiture again to the plaintiff in 1941 when the forfeiture had been incurred by his father even during his life time. Now it is not in dispute that the assistance decrees were passed on 24-4-1939. And the forfeiture notice was served on the plaintiff's father on 27-5-1939 under sec.

section 153 of the Land Revenue Code. That sectio says that " the Collector shall not declare any holding to be forfeited until after the expiration of at least 15 days from the latest date on which th notice shall have been fixed as required by section 166 " so that after the expiry of the period of 15 days from 27-5-1939, when the notice of forfeiture was served on the plaintiff's father his property stood automatically forfeited. Therefore it is clear from the wording of the section that a second notice to the after the death of the father who had incurred forfeiture under section 153 of the Land Revenue Code was not at all necessary and if the Revenue authorities did it, it was clearly wrong, because that was not justified by the provisions section 153 of the Land Revenue Code. Now it might be argued, though that was not done in this case that no forfeiture under section 153 can be incurred until after there is a clear declaration by the Collector in that behalf, In my opinion, section 153 is not ~~xxxx~~ mandatory because it only says that the Collector may declare the occupancy or alienated holding which means that he is not bound to make declaration. Therefore the absence of a clear declaration of forfeiture under section 153 does not make the forfeiture invalid when it has been incurred after the expiry of 15 days from the date of service of notice of forfeiture. Therefore once the liability of forfeiture is incurred, it can hardly be said that it could be defeated by the death of plaintiff's father before the actual order of forfeiture was passed It follows therefore that the cause of action had accrued to the plaintiff's father during his life time and so, if

the plaintiff's father wanted to to put his ~~xxink~~ plaint on the file, he should have done it within one year from the expiry of 15 days from the service of notice of forfeiture on him. The cause of action not having accrued to the plaintiff he can not now take advantage of section 6 of the Limitation Act. Therefore in my opinion, the plaintiff's suit is clearly barred by limitation.

80. In the result, the plaintiff's suit ~~is~~ fails. I therefore pass the following order

Order.

Plaintiff's suit is dismissed with costs.
Plaintiff do bear the defendants' costs.

13-7-1949. Sd/- S.W.Bhoj,
Civil Judge, Senior Division.

True Copy.

Sd/- X X Soudagar,
Clerk of the Court.

4935

D e c r e e.

In the Court of the Civil Judge,
Senior Division, at Hubli.

Long Cause Suit No.9 of 1948 - Ex.57.

Plaintiff :- Dattatrya Venkatesha Kulkarni, Hindu, minor aged 16, by his next friend maternal uncle Govind Shirinivas Kulkarni, Hindu, age 38, Agriculturist of Nagarhalli, Taluka Navalgund.

Vs.

Defendant :- The Government of the Province of Bombay.

2. Rangarao Swamirao Deshpande, Hindu, watani whaiwat, aged 60, residing at Aladkatti Taluka Hangal.

Claim Rs.65/-

Presented on 19th January '48.

Filed on 19th January '48.

The plaintiff above named begs to state as under :-

1. Kunkur is a surveyed Inam village in Shiggaon Taluka of Dharwar District. Defendant 2 Rangarao is the Khatedar Inamdar of the said village. Ramachandra Baburao Kulkarni, Hanmant Babubao Kulkarni and Venkatesh Baburao Kulkarni

were the three sharers of the Kadim Kulkarniki Watan of the said village.

2. The following lands of the said village, viz:-

S.No.	Area.	Assessment.
14.	4-36.	12- 0-0
41/1.	0-20.	9- 6-0
23.	3-20.	7- 0-0
42.	22-31.	18- 0-0
43.	17-29.	15- 0-0
44.	24- 4.	26- 0-0
156.	11-16.	5- 0-0
41/2.	9-37.	9-13-0
153/1.	4- 2.	2- 5-0
41/3	10-39.	10-13-0
153/2	2-38.	1-11-0

were comprised in the said Kulkarniki watan. The said Ramachandra was the Khatedar thereof originally; he, Hanmant and Venkatesh partitioned these and other properties in three equal shares in the year 1917 by a partition deed dated 3-4-1917. At this division, S.Nos.14, 41/3, 44 and 153/2 out of the above said survey numbers fell to the share of Venkatesha who made exclusive wahiwat thereof till his death in about August '40. Of these grant survey numbers Nos.41, 41/3 and 153/2 stood in his name, in the record of rights since the partition till the date of his death. Survey No,44 however though nominally continued in the name of Ramachandra Khatedar was since the time of partition in the actual possession and wahiwat of Venkatesha down to the date of his death. Ramachandra and Hanmant as well took exclusive possession of the lands that fell to their respective shares and made sperate wahiwat thereof.

3. Kadim Inam Judi in respect of the above said lands was payable to the Khatedar Inamdar, the said

said Rangarao. He knew of the said partition between Ramachandra, Hanmant and Venkatesh and was therefore recovering seperately from each of them the Judi that was payable in respect of the shares of each of them. The said Judi remained in arrears for a few years and Rangarao filed Assistance suits in Shiggaon Mamlatdar's Court for recovery thereof against Ramachandra only. Venkatesh was not added as a party as defendant therein and a few assistanc decrees were obtained by Rangarao against Ramachandra only for recovery of the said arrears between 1935 and 1939. In execution of the said decrees, the Assistant Collector II Division, Dharwar ordere that the above said lands including the four in the exclusive possession and wahiwat of Venkatesh shoul be forfeited and restored to the said Inamdar Rangrao in satisfaction of the arrears of Judi as ordered in assistancesuits. This order was passed on 3-3-1941,

4. Venkatesh a was the father of plaintiff minor Dattatraya and he was dead in about August 1940 long before the date of the Assistant Collector's said order. Since the death of his father, Dattatraya came in possession of the four lands S.Nos. 14, 41/3, 44 and 153/2 which had continued in Ramachandra's name inspite of partition case to be entered in Dattatrya's name on his father's death, and as a result of the enquiry, held by the Mamlatdar, pursuant to the Assistant Collector's order and on 30-5-1941 the Circle Inspector of Shiggaon gave notice to Dattatraya that the said Four lands in his possession should be delivered into the possession of Rangarao. The notice was served on him on 15-5-1941. He came to know of the said order of forfeiture for the first time only on 15-5-1941 and till then he knew nothing whatever....

of the circumstances that had led to the said order of forfeiture. He made an appeal to the Collector of Dharwar District against the said order. But it was summarily and exparte dismissed on 18-11-1943. Against this order of dismissal, he filed an appeal before the Bombay Revenue Tribunal with the result that the Tribunal held the Assistant Collector's order to be correct and dismidded the appeal by its order dated 15-3-1947.

5. The said order of forfeiture of the said four lands Survey Nos.14,41/3,44 and 153/2 and the restoration thereof to Rangarao was and is wholly illegal and ultra vires, it is therefore inoperative and void. Inspite of Rangarao's knowledge of the partition between the said three brothers and his actual recovey of Kadim Judi from each of them in three equal shares for several years in the past, his conduct in filing the said assistance suits and obtaining decrees therein against Ramachandra alone amounted to waiver of his rights and remedies against Venkatesh and to a release of the latter at least in res ect of the amount covered by the said decrees; it therefore estopped him from enforcing the daid decrees either against Venkatesha or his said lands. The assistance suits and decrees themselves having been for recovery of judi of past years not allowed by the Land Revenue Code was bad in law and said dm decrees could not legally be executed by the Revenue authorities against the said lands. The decree having been passed against Ramachandra alone, their execution against Venkatesh or the said four lands was wholly bad in law. Notice of forfeiture was not duly derved on Venkatesha. Notice served on him was in respect of only Rs.24- 2-0 as being due from him and order of forfeiture waa for recovety of a ey much bigger amount. Notice of forfeiture was not

4939

in respect of recovery of arrears of potgi due to the officiating Kulkarni and the order of forfeiture was in respect of recovery of the alleged potgi as well the judi was not rent or land revenue and neither judi nor potgi having been payable to Government the lands could not legally be forfeited. The notices of forfeiture expired on the death of Venkatesh and a fresh notice was necessary to be served on Dattatraya which was not done. The lands ordered to be forfeited were much more than was necessary for the recovery of the arrears. No notice was given either to Ramachandra who was the sole representative watandar orto Venkatesha to render personal service in default of payment of potgi and only on refusal to serve the lands could be at best resumed. The dues payable by Venkatesh lapsed on his death and the lands which were watan lands could not be proceeded against or forfeited after his death. The dues were all beyond time both under the general law and the land revenue Code. The said four lands were given by Venkatesha to Ryots on advance lease on condition that they should pay the Inamdar Rangrao the judi due to him and the tenants should have been given notice to pay which was not done. The order of forfeiture was in respect of recovery of more money than was shown in the notice of forfeiture. The notice of forfeiture again was not leggily issued, published and served. The Collector had ordered the Assistant Collector to take legal steps only if decretal amount would not be recovered without resort to coercive measures and this order having been passed by him after the death of Venkatesha, the Assistant Collector should have called upon Dattatraya to

pay up the dues before further steps as indicated by the Collector were taken which the Assistant Collector did not do. Dattatraya's name had been entered in the Record of Rights before the Assistant Collector's order of 3-3-1941. The Assistant Collector was wrong in holding that the amount was irrecoverable. The Revenue Tribunal was wrong in ignoring all the above points and should be considered many more arising in the case. It is wholly wrong in assuming that the forfeiture was ordered for the recovery of potgi dues. The notice of forfeiture and the order of forfeiture were and are bad in law, in various ways. The lands were not liable to forfeiture. The whole action of the revenue authorities from the atart to the finish offended and offends against the various imperative provisions of the land Revenue Code, Watan Act and other Acts and the rules made thereunder. The elements necessary to entail a for-feiture were and are absent in this case.

6. The order of forfeiture and of restoration of the said four lands having been void and inoperative as mentioned herein before, neither the Government nor any of its executive officers had the right to dispossess Dattatraya of the said lands nor have they or any of them any right to obstruct him in his quiet and peaceful enjoyment and wahiwat thereof. Since the Tribunal had dismissed the appeal by its order dated 15-3-1947 and confirmed the Assistant Collector's order of 3-3-41 the Government through its executive officers is about to dispossess him of the said lands for delivering them to Rangarao and obstruct him in his wahiwat thereof. A suit has thereofore beco e nx necessary against the Government of the Province

of Bombay and the said Rangarao for a declaration that the said lands were and are not liable to forfeiture in execution of the said assistance decrees and or for recovery of arrears of potgi and that the said order of forfeiture and restoration is itself is illegal, ultra vires, void and inoperative and for a permanent injunction against them not to obstruct Dattatraya in his wahiwat thereof nor to dispossess him of them.

7. The cause of etion for the suit has arisen in May 1947.

8. The cause of action for the suit having arisen and the lands forfeited having been within the limits of jurisdiction of the Civil Judge, Senior Division, Hubli the suit has been filed in His Court in Hubli and one of the defendants having been the Government, this Court has jurisdiction to try this suit.

9. Without prejudice to what has been said above, Dattatraua had already in June 1945 paid in Shiggaon Taluka Treasury all the arrears of Kadim Inam Judi of Rs.217- 9-0 for which forfeiture was ordered and has been regularly paying his share of the said Judi to the village officer of Kinkur since 1940. The Inamdar Rangarao has accepted this judi and nothing is in arrears. This was dine under order of the Commissioner, Southern Division. He will further continue to paying this judi in future without default and regularly. He is further ever ready and willing to pay the whole arrears of potgi and to pay the same in future as and when it falls due. In the latter case Dattatraya submits that the Government in justice and equity should restore him all the lands of the shares of Ramachandra and

and Hanmant now in Rangarao's possession proceedings are seperately taken for the purpose.

10. Notice of the suit under section 80 of the Civil Procedure Code has been duly given and this suit has been filed on expiry of X2 months since notice.

11. This suit having been for a declaration and consequential relief of injuction, this suit for purposes of Court fees valued at Rs.65/- and the same is the value for jurisdiction as well.

12. The lands in question having been ordered to be restored to deft 2, he is a proper and necessary partyx to the suit.

13. Plaintiff prays as under :-

a). The Court on holding and declaring that the Assistant Collector's said order dated 3-3-1941 directinf forfeiture and restoration of the said lands of Kunkur village in Shiggaon Taluka viz., S.Nos.14,41/3,44 and 153/2, is ultra vires, illegal inoperative and void, be pleased to grant a permanent injunction to the defendant restraining them from obstructing and interferring with the plaintiff's possession and wahiwat thereof in any way.

b). Costs of suit and such other relief or reliefs as the Court deems fit be also awarded to plaintiff.

This suit coming on this day the 13th July 1949 before Mr.S.M.Bhoj, Civil Judge, Senior Division, for final disposal in the presence of M/S N.R.Koppikar and K.P.Nagarkatti, pleaders for plaintiff and Mr.~~HXHX~~ B.R.Mathad, pleader for defendant No.1 and M/S N.K.Dixit, L.R.Durg and

5 1/43

S.H.Deshpande, pleaders for defendant No.2, it is hereby ordered and decreed as under :-

Pleantiff's suit is dismissed with costs.

Plaintiff do bear the defendants' costs.

Bill of Costs.

	Plaintiff.	Defendant No.1	Defendant No.2
1.	Stamp for the plaint 6- 4-0	---------- 0- 0-0	---------- 0- 0-0
2.	" Vakalatnama. 9-10-0	---------- 0- 0-0	---------- 0-10-0
3.	" applications Exs.5,6,9,24,27, 28,32,36,38,42... 6- 4-0	Exs.15,16,17,21 22,23,29 and 33 5- 0-0	Ex.s 11,18 and 19 1-14-0
4.	Pleaders fees on Rs.65/- minimum. 15- 0-0	---------- 15- 0-0	---------- 15- 0-0
			Copying fees 2- 0-9
	Total. 28- 2-0	20- 0-0	19- 8-9
	Costs disallowed Exs. 9,24,5,27,32,36,38 & 42..... 5- 0-0	Exs.17,21,22 23,29 & 33. 3-12-0	Exs.43.
	Balance..... 23- 2-0	16- 4-0	18- 4-9

Given under my hand and the seal of the Court this day the 13th July 1949.

Sd/- S.M.Bhoj,
Civil Judge, Senior Division.
23-7-1949.

(S e a l).

" T r une C o p y "

Sd/- x x x

Clerk of the Court.

Suits :

Dharwar.

For a declaration that the order of the Assistant Collector forfeiting lands in the village of Kunkur, taluka Shiggaon, is *ultra vires* and for consequential relief.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 9639.

Bombay Castle, 15th October 1948.

Letter from the Collector of Dharwar, No. L.A.W. 487, dated the 26th July 1948—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), HUBLI.

Civil Suit No. 9 of 1948.

Dattatraya Venkatesh Kulkarni, minor by his next friend Govind Shrinivas Kulkarni. Plaintiff;

versus

1. The Government of the Province of Bombay ...
2. Rangrao Swamirao Kulkarni ... } Defendants.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 401, dated the 10th August 1948—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 9383, dated the 5th October 1948—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

original

P. M. LAD,
Secretary to Government.

G. R. No. 9639, L. D., dated the 15th October 1948.

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Dharwar,
* The Secretary, Bombay Revenue Tribunal, Bombay,
The District Government Pleader, Dharwar (with two copies of the brief).

* With a copy of the brief.

No. - of 1948.

Issued on 5/1/1950

Copy forwarded for information and guidance to

47

DHARWAR CIVIL SUIT NO. 9 OF 1948.

Chronological Statement of Facts.

File III page 257.

The suit is for a declaration that the order of the Assistant Collector, Dharwar, No. W.T.N.B.K. 598, dated 3rd March 1941, forfeiting under section 153 of the Bombay Land Revenue Code, Survey Nos. 14, 41/3, 44 and 153/2 of the village of Kunkur, taluka Shiggaon, and restoring possession thereof to the second defendant Rangrao Swamirao is illegal and *ultra vires* and for a permanent injunction restraining defendants from disturbing the plaintiff's possession of the lands.

2. Kunkur, in taluka Shiggaon, district Dharwar, is an entire Inam village of which the second defendant is the Inamdar and registered holder. There is a Kadim Kulkarni Watan in this village. No scale *potgi* was fixed. Survey Nos. 14, 41, 42, 43, 44, 153 and 156 were assigned as remuneration for the Kulkarni service. In the Record of rights, these lands stood in the name of Ramchandra Baburao Kulkarni the sole representative Watandar and his brothers Hanmant and Venkatesh. The plaintiff in this suit is the son of Venkatesh.

3. The Watan lands were subject to two liabilities *viz.*, (1) the Kadim Inam Judi payable to the Inamdar and (2) the *potgi* of the officiating Kulkarni payable to Government. The holders of the lands failed to pay the Inamdar's dues and the officiator's *potgi* for several successive years. The Inamdar filed assistance suits year after year from 1928 to 1933 for the arrears of the *judi* payable to him and obtained decrees but he could not recover anything on those decrees.

File III page 235.

4. On 29th November 1938, the Assistant Collector made a report of the case to the Collector. He said that the total dues on account of the *kadim inam judi* amounted to Rs. 521-11-8 and the arrears on account of *potgi* up to 30th April 1938, amounted to Rs. 771-2-0 and pointed out that since the Inamdar had failed to obtain any satisfaction of the decrees in the assistance suits, there was no objection to forfeit the lands under section 153 of the Land Revenue Code and restore them to the Inamdars. With regard to the *potgi* he proposed that the superior holder should enter into an agreement prescribed in article 157(B) of Joglekar's Alienation Manual for payment of annual *potgi* to the officiator.

File III page 253.
File III page 255.
File III page 257.

5. The Collector approved the proposal of the Assistant Collector and on 21st February 1941, the second defendant executed a bond undertaking to pay the *potgi* to the officiating Kulkarni. Hence on 3rd March 1941, the Assistant Collector passed an order forfeiting under section 153 of the Land Revenue Code all the Watan lands, and restoring them to the second defendant in satisfaction of the arrears of *judi* under rule 123(*d*) of the Land Revenue Rules.

File IV page 1.

6. Meanwhile, Venkatesh the father of the plaintiff had died in 1940. On 28th May 1941 the plaintiff preferred an appeal to the Collector against the Assistant Collector's order contending that the Assistant Collector's order was illegal and should be set aside in so far as it concerned Survey Nos. 14, 41/3, 44 and 153/2. The

File IV page 61.

appeal was summarily dismissed by the Collector on 18th November 1941.

File VII page 21.

7. On 15th February 1944, the plaintiff preferred revision application to the Bombay Revenue Tribunal but the Tribunal dismissed it on 15th March 1947.

8. On 14th July 1947, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 19th January 1948, he filed the suit in Court of the Civil Judge, Senior Division, Hubli.

Grounds of Defence.

Jurisdiction.—The suit is barred under clauses (*a*) and (*c*) of section 4 of the Bombay Revenue Jurisdiction Act, 1876. Admittedly the suit lands are assigned for the remuneration of the Kulkarni service. The lands therefore appertain to the office of a hereditary officer appointed and recognised under the Bombay Act III of 1874. The suit involves a claim against Government relating to such lands. It is therefore barred under the first paragraph of clause (*a*). Secondly it is a claim arising out of proceedings for the realisation of land revenue or the rendering of assistance to a superior holder for recovery of his dues. It is therefore barred also under clause (*c*).

2. *Limitation.*—The plaintiff seeks relief the grant whereof necessarily involves the setting aside of the Assistant Collector's order of 3rd March 1941, confirmed in appeal by the Collector and the Revenue Tribunal. The order in question was passed by that officer in his official capacity and in exercise of his statutory powers under section 153 of the Land Revenue Code and rule 123 (*d*) of the Land Revenue Rules and is therefore a legal order. The plaintiff admits to have received notice of that order on 15th May 1941. Therefore under Article 14 of Schedule I read with section 15 (*2*) of the Indian Limitation Act, the suit ought to have been filed within one year and two months from the date on which the plaintiff had notice of the Assistant Collector's order. It should be pointed out that in computing the period of limitation under Article 14 the time spent in prosecuting appeals before the Collector and the Bombay Revenue Tribunal cannot be excluded (Ganesh *v.* Secretary of State, I.L.R. 44 Bom. 451). The suit is thus *prima facie* time-barred under Article 14.

3. *Merits.*—It appears from the record that the sole representative watandar Ramchandra and his two brothers Hanmant and Venkatesh had divided the watan lands in 1917 and they were thereafter entered separately in their names. Survey Nos. 14, 41/3 and 153 were entered in the name of the plaintiff's father Venkatesh and it is claimed that Survey No. 44 was also given to him in partition although it nominally stood in the name of Ramchandra. The plaintiff has sought relief in respect of these four lands which were allotted to his father. The first contention in the plaint is that the second defendant had applied for assistance against Ramchandra alone although he knew of the partition of watan lands, that he had thereby waived his rights and remedies against the plaintiff and his father and that the plaintiff's father not being a party to the proceedings, the decrees in the assistance suits could not be enforced against the lands standing in the name of the plaintiff. This contention is untenable. The Collector's order of 18th November 1943 shows that the plaintiff's father was a party to the assistance suit decree passed on 24th April 1939. The notice of forfeiture of lands was also served upon him on 27th May 1939 under proviso to section 153 of the Land Revenue Code. It is therefore incorrect to say that the decrees in the assistance suits could not be enforced against him or against the lands allotted to him. Besides, the liability for the payment of the *kadim inam judi* and the officiator's *potgi* was on the lands themselves; and section 153 of the Land Revenue Code empowers the Collector to declare an alienated holding in respect of which an arrear of land revenue is due to be forfeited to Government. The order of forfeiture of the watan of the suit lands was, therefore, valid and *intra vires*. The assistance decrees obtained by the Inamdar were in respect of the total *judi* from all the Kulkarni watan lands including those held by the plaintiff and his father. The Inamdar was therefore entitled to have the decretal

amount recovered as an arrear of land revenue under section 87 of the Land Revenue Code. The provisions of section 153 as regards the forfeiture would apply to all lands with regard to which the arrears were due.

4. It is next contended that under the Land Revenue Code assistance cannot be given for recovery of arrears of past years' *judi* and for that reason. also the decrees obtained in the assistance suits could not be executed by the revenue authorities against the said lands. There is no substance in this contention also. Section 86 of the Land Revenue Code provides that a superior holder is entitled upon written applications to the Collector to assistance by the use of precautionary and other measures for the recovery of Land Revenue payable to them by inferior holders or by co-sharers in their holding under the same rules except that contained in section 137, and in the same manner as prescribed in Chapter XI of the Code for the realisation of Land Revenue by the Provincial Government. Section 150 which occurs in Chapter XI of the Code enumerates the processes for the recovery of arrears of Land Revenue. Clause (*b*) thereof provides that the arrears can be recovered by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153. Then section 151 enacts that the processes enumerated in section 150 may be applied for the recovery of arrears of former years as well as of the current year. There is, therefore, no force in the plaintiff's contention that *judi* for past years cannot be recovered under the provisions of the Land Revenue Code.

5. It is also urged that the notice served on Venkatesh showed only a sum of Rs. 24-2-0 as due from him and that his lands should not have been forfeited for the small amount. There is no substance in this contention either. The report of the Mamlatdar No. W.T.N.S.R. 140, dated 23rd April 1945, shows that the total amount due from the lands in the possession of the plaintiff was Rs. 217-9-0 for arrears of *judi* and Rs. 421-5-4 for arrears of *potgi* up to the year 1945. The total amount recoverable from the plaintiff in 1945 was therefore Rs. 638-14-4. Even if the arrears are reckoned up to 1941 only the total amount of *judi* and *potgi* due would amount to Rs. 538.

6. The next contention in the plaint is that the arrears of *kadim judi* due from the Kulkarni were not land revenue and were not recoverable under the provisions of the Land Revenue Code. However, the liability to pay *kadim judi* recoverable from the watan lands in the present case did not arise out of any contractual liability as in the case of *judi* payable under the Gordon Settlement Sanad. It is true that payment under the Gordon Settlement Sanad cannot be recovered as an arrear of land revenue (*vide* Government Resolution, Revenue Department, No. 3528, dated 8th October 1923; Phadnis Watan Act pages 226-27). But the liability in the present case is in the nature of a quit rent within the meaning of section 187 of the Land Revenue Code and is recoverable as an arrear of Land Revenue after a decree has been obtained by the Inamdar under section 87 of the Land Revenue Code.

7. It is further contended that the notice of forfeiture expired on the death of Venkatesh and the fresh notice was necessary to be served on the plaintiff. The dues payable by Venkatesh lapsed on his death and the lands which were watan lands could not be proceeded against and forfeited after his death. Now the notice of forfeiture under proviso (*a*) to section 153 of the Land Revenue Code was served on Venkatesh on 28th June 1939. Under proviso (*b*) thereof the declaration of forfeiture could have been made at any time after the expiration of 15 days from that date. In fact, the actual order of forfeiture was made on 3rd March 1941 when Venkatesh was dead. Nevertheless forfeiture had already been incurred during the lifetime of Venkatesh and it was not necessary in law to issue a fresh notice to the

plaintiff after the death of Venkatesh. The liability to forfeiture which had accrued as soon as the conditions laid in section 153 of the Land Revenue Code were fulfilled could not be defeated by the death of Venkatesh before the actual order of forfeiture was made. Therefore for this reason also the order made by the Assistant Collector is correct.

8. The last important argument is that the order of the Assistant Collector does not comply with the requirements of the provisions of rule 121 of the Land Revenue Rules which provides that where land in respect of which an arrear is due consists of two or more survey numbers or of two or more sub-divisions of survey numbers or of two or more estates separately assessed, and the Collector is of opinion that the whole amount of such arrear could be realised by the sale of less than all of such survey numbers, portion or estates, he shall restrict forfeiture to such one or more survey numbers or sub-divisions as prove sufficient to realise the arrears. The total amount of assessment payable on the four lands in possession of the plaintiff is about Rs. 50, and it is urged that the lands ordered to be forfeited were much more than necessary for the recovery of the arrears. There would have been some force in this contention if the lands were merely forfeited for the payment of *kadim judi*, since the lands have been divided between the three sharers and *judi* was being separately recovered from them by the Inamdar even though it had not been apportioned between the sharers. But so far as the arrears of *potgi* are concerned, they were due from the entire holding. They were not apportioned and it could not have been possible to apportion separately between the land. Moreover there had been persistent defaults on the part of the watandars from 1927-28 onwards and every attempt made to recover these arrears had failed and the arrears had been mounting up year after year. In these circumstances the order made by the Assistant Collector was justified.

9. Lastly the plaintiff has urged in paragraph 9 of the plaint that he has already paid all the arrears in the Shiggaon taluka Treasury in June 1945 and has been regularly paying his share of the *judi* to the village officers of Kunkur since 1940. He has, therefore, prayed that Government in justice and equity should restore to him all the lands. It should be pointed out that the payment was made several years after forfeiture had occurred and it does not therefore give the plaintiff any legal right to restoration of the suit lands. Whether the forfeiture order should be cancelled and the lands restored to plaintiff or not lies within the discretion of Government and the plaintiff cannot get any relief in respect thereof from the Civil Court.

10. For the reasons stated above, it should be contended that the suit fails and must be dismissed with costs.

Suits :
Dharwar.
for a declaration that the order of the Assistant Collector forfeiting lands in the Village of Kunkur taluka Shiggaon, is ultra vires and for consequential relief.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 455
Bombay Castle, 11th January 1950.

Read Government Resolution Legal Department No.9639 dated the 15th October 1948.

Letter from the Sub-Government Pleader, Hubli No.88 dated the 5th October 1949 forwarding uncertified copy of judgment and decree and stating that the suit noted in the margin was decided by the

In the Court of the Civil Judge (Senior Division), Hubli. Civil Suit No.9 of 1948. Dattatraya Venkatesh Kulkarni, minor by his next friend Govind Shrinivas Kulkarni. .... Plaintiff; versus 1.The Government of the Province of Bombay 2.Rangrao Swamirao Kulkarni.....	Defendants.	Civil Judge Senior Division, Hubli on 13th July 1949, when the following

order was passed :-

"Plaintiff's suit is dismissed with costs, plaintiff do bear the defendants costs"

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

original

R. M. MEHTA,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Secretary Bombay Revenue Tribunal

Issued cop 11/1

S.F.M. 9/1/50.
P&C 9/1

Subject to signature
A.S.
9/1
9/1

60

Subject after issue
file in S Dharwar/60.-

12/1.

12/1

S. Dwr 16/1/50
(Now file).
16/1/50

J/ 4405
13-3-50 53

Subtd. with ffps. (S. Dwr 2/50)

This is a report for defence of the Appeal No. 314 of 1949 from Shamar Dist.

15.3

15
AS

The decree of the lower court is in favour of the respondent but the decree may be varied.

The respondent may be awarded costs of the appeal by the appellant.

15/3

ART. 15/3

Suits:
Dharwar

For a declaration that the order of the Assistant Collector forfeiting lands in the village of Kunkur, taluka Shiggaon is ultra vires and for consequential relief.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 4330

Bombay Castle, 29th March 1950.

Read Government Resolution, Legal Department, No. 455, dated the January 1950.

Letter from the District Government Pleader, Dharwar, No. 206 dated the 22nd February 1950 forwarding a copy of the memo. of appeal No.314 of 1949 filed by the plaintiff in the suit noted in the margin and requesting Government sanction to the defence of the appeal.

In the Court of the Civil Judge (Senior Division), Hubli;
Civil Suit No. 9 of 1948.

Dattatraya Venkatesh Kulkarni, minor by his next friend Govind Shrinivas Kulkarni) Plaintiff;
Vs.
1. The Government of the Province of Bombay;
2. Rangrao Swamirao Kulkarni.) Defendants

Endorsement from the Collector of Dharwar, No. L.A.W.487, dated the 27th February 1950 forwarding the above.

RESOLUTION:- Sanction is accorded to the defence of the Civil Appeal No. 314 of 1949 in the Court of the District Judge, Dharwar, on the lines of the brief accompanying Government Resolution, Legal Department, No. 9639, dated the 15th October 1948 and the favourable grounds contained in the judgment of the Civil Judge, Senior Division Dharwar, dated the 13th July 1949.

By order of the Governor of Bombay,

Original R. M. Mehta
for signature

R. M. Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Secretary, Bombay Revenue Tribunal, Bombay,
The District Government Pleader, Dharwar.

Issued
on
29/3

10.kam. 20.3.50.

Letter from the District Government Pleader, Burwan, No. 2004, dated 11th January 1950.-

Dated Exit No. 3 of 1950.

In the Court of the 3rd Judge (Senior Division);

Attaraya Periatsan Sullapuri, minor by)Plaintiff-
his next friend Govind Sriniva-s Sullapuri)Petitioner;

-versus-

1. The Government of the Province)
of Jhansi;)
2. Sangeno Bhuman Alagiri.)Respondents

- - - -

Received on 30-8-1949.
Registered on 30-8-1949.
Decided on 23-6-1952.
Duration 2 years, 9months and 24 days.

IN THE COURT OF THE ASSISTANT JUDGE, DHARWAR.
AT DHARWAR.

Civil Appeal No.314 of 1949 from the decree in L.C.Suit No.9 of 1948, of the Court of the Civil Judge, Senior Division, at Hubli, (Shri.S.M.Bhoj).

Pleaders :-

Shri. N.R.Koppikar. — Dattatraya Venkatesh Kulkarni, Hindu, minor aged 16, by his next friend maternal uncle Govind Shrinivas Kulkarni, of Nagarhalli, Taluka Navalgund. --- Appellant (Or Plff)

Versus.

Govt. Pleader.
Shri. N.K.Dixit. — 1. The Government of the Province of Bombay
2. Rangarao Swamirao Deshpande, residing at Aladakatti, Taluka Hangal. Respondents (Or. defts)

Claim Rs.

Judgment.

The appellant is one Dattatraya Venkatesh Kulkarni minor by the next friend one Govind Shrinivas Kulkarni. Dattatraya's father Venkatesh and his brothers Ramchandra and Hanmant held certain lands as vatan lands assigned for the kulkarni service of village Kunkur. The Inamdar of village Kunkur is one Rangrao Swamirao Deshpande and he has to receive the judicial dues in connection with these service vatan lands and the holders of the vatan lands were also to pay the amount of potgi to be paid to the officiating Kulkarni.

The sole representative vatandar is Ramchandra Baburao Kulkarni, even though Ramchandra and his brothers Venktesh and Hanmant had got these lands partitioned between themselves and 4 lands, i.e. S.Nos.14, 41/3, 44 and 153/3, had fallen to the share of Venktesh and were in his possession and enjoyment.

2. As the judi was not paid, the Inamdar filed assistance suits against the representatives vatandar Ramchandra and obtained decrees from 1935 onwards till 1939. Still no amount could be recovered The potgi amount to be paid by the representative vatandar also fell in arrears. So, the assistance Collector thought of forfeiting the lands and restoring them to the Inamdar. He issued a notice of forfeiture under section 153 of the Land Revenue Code. This notice was served on Venktesh. Subsequently Venktesh died in August 1940. Then the Assistant Collector passed an order on 3-3-1941 forfeiting the lands and restoring them to the Inamdar Rangarao in consideration of the arrears of judi to the extent of Rs.521-11-8. The next friend of the minor son of Venkesh appealed to the Collector of Dharwar against the order of forfeiture. The appeal was dismissed. He then went in appeal to the Bombay Revenue Tribunal which held on 15-3-1947 that the order of the Assistant Collector was correct.

3. The minor Dattatraya filed a suit against the Government of Bombay and the Inamdar Rangrao to have a declaration that the order of the Assistant Collector was illegal and void, that defendants 1 and 2 should be restrained from disturbing the possession of the four lands. It was alleged that plaintiff was not bound by the Assistance decrees obtained by the Inamdar against Ramchandra alone, that the Inamdar was, in fact, recovering judi from Ramchandra and his two brothers seperately so far as their properties

54

were concerned, that there was no valid notice to Venktesh and no notice at all to plaintiff, that consequently the order passed by the Assistant Collector was illegal and void and that for that reason defendants should not do any thing to disturb the possession of plaintiff with respect to the four lands in his possession and that injunction should be issued against them.

4. Defendant No.1 i.e. the Government of Bombay, contended inter alia that the order of the Assistant Collector regarding the forfeiture and restoration of lands is quite legal and valid, that the suit of plaintiff was barred under the provisions of the Revenue Jurisdiction Act and the suit was barred by limitation. Defendant No.2 i.e. the Inamdar, too said almost the same thing.

5. At the instance of defendants the learned Civil Judge, Senior Division, raised only the following two preliminary issues, namely -

1. Whether the suit is barred by the Revenue Jurisdiction Act ?
2. Whether the suit is barred by limitation ?

ans answered them in the affirmative, holding that the suit was barred under section 4A, clauses(1) and (4) of the Bombay Revenue Jurisdiction Act, and that the suit was time barred under article 14 of the Indian Limitation Act. Consequently the learned Judge has dismissed plaintiff's suit. Plaintiff being dissatisfied, has filed the present appeal. The points for consideration are the very ones and I answer the first issue in the affirmative and the second issue in the negative.

Reasons.

6. There is no dispute regarding the position that the suit lands are the service vatan lands and judi has to be paid to the Inamdar Rangrao (defendant No.2) and such amount as potgi to the Government for paying over to the person actually officiating as Kulkarni. It is also a fact that judi was not paid and the Inamdar had to file assistantance suits from 1935 onwards and obtained decrees and that still the amount remained un-recovered. The amount of potgi was also not paid. In the position the question is to see whether the steps taken by the Assistant Collector in connection with the recovery of arrears of judi as well as potgi are proper and legal. The Inamdar Rangrao undetook to pay the arrears of potgi as well as to pay the amount of the potgi in future in case the lands were restored to him. The Assistant Collector, after consulting hte Collector, took up the drastic steps of forfeiting the lands under section 153 of the Land Revenue Code and restoring them to the Inamdar. Accordingly he passed an order on 3-3-1951. Exh.51 is the order passed by the Assistant Collector in this respect. There is no ground as to why such an order is illegal and void. It seems to be the position that Ramchandra and his two brothers had got partitioned these lands between themselves and the Inamdar too had received seperately the judi from each so far as the lands in their position and enjoyment. Still this does not mean that the Inamdar was wrong in filing assistance suits against the sole representative vatandar regarding all the the lands. He is not required to join all the prayers in the suit and plaintiff cannot be allowed to say that he was not liable to pay any thing as judi to the Inamdar as the suits were against only Ramchandra.

7. Apart from the question whether the order of the

Assistant Collector is legal or illegal, valid or void. the direct question for consideration is - whether the suit for declaration and injunction against the Government regarding vatan lands is tenable in view of the section 4 of the Bombay Revenue Jurisdiction Act. The learned Judge has held that the suit is barrred in view of section 4A clauses (1) and (4) and he is correct. Section 4 A clause (1) lays down that ' no Civil Court shall exercise jurisdiction as to any claim against Government relating to any property appertaining to the office under the Vatan Act.' Clause (4) lays down that ' claims against Government relating to lands held for service cannot also be entertained. The lands in question are admittedly service vatan lands, and the present claim is against Government regarding these lands. So obviously the present suit is barred under section 4A, clauses (1) and (4) of the Bombay Revenue Jurisdiction Act.

8. The learned Pleader for the appellant brought to my notice the ruling 14 Bom. L.R. 793 (Naganchand Vs. Vithalrao) which concerns a Deshmuck vatan land and urged that in that case the provisions of the Bombay Revenue Jurisdiction Act are held not applicable. He urges that section 4 of the Act comes into play only if there is any order passed under the Bombay Hereditary Offices Act, and that in the present case, as there is no question of any order under that Act, section 4 is not applicable to the present case at all. The view of the learned pleader for the appellant cannot be said to be correct. Any claim against Government regarding service vatan lands cannot be entertained by Civil Court. In the case relied upon Government was not a party and so naturally there was no application of calusas(1)

and (4) of section 4A of the Bombay Revenue Jurisdiction Act. So, as Government is a party in the present case and really a material party, the present suit is barred under clause s (1) and (4) of section 4 A of the said Act. That ruling has no application to the present case. In a very recent case of the Supreme Court reported in A.I.R. 1952 Supreme Court 138 (Bhujangrao Vs. Malojirao and others) it has been held that the jurisdiction of the Civil Court is barred in the matter against Government relating to lands held as Saranjam lands which stand on the same footing as service vatan lands so far as clause (4) is concerned.

9. As regards the point of limitation, the learned Civil Judge cannot be said to be correct. The order of the Assistant Collector regarding forfeiture and restoration of the lands is passed on 3-3-1941 when plaintiff was a minor. Plaintiff can take advantage of section 6 of the Indian Limitation Act. The learned Civil Judge takes the starting point as from the time when notice of forfeiture had been served on plaintiff's father Venktesh and for that reason takes the view that the suit is not filed within one yeae from that and consequently under section 14 of the Indian Limitation Act, the suit is barred. Simply because a notice under section 153 of the Land Revenue Code is given it does not mean that forfeiture came forth. The proviso to this section is clear to the effect that the Collector shall have to make an order of declaration regarding forfeiture 15 days after the notice and until such an order is passed, there would be no forfeiture at all. So after the notice to Venktesh the order passed is the one dated 3-3-1941 and at this time as plaintiff is a minor, he is entitled to the benefit of section of the Indian Limitation Act. So the present suit is not barred by limitation at all.

77/63

O r d e r.

Appeal is dismissed. Appellant's next friend to bear the costs of respondents in one set besides his own.

Dated 23rd June '52.

Sd/- D.K.Patil,
Assistant Judge, Dharwar.

-65-

Suits:

Dharwar.

For a declaration that the order of the Assistant Collector forfeiting lands in the village of Kunkur, taluka Shiggaon is ultra vires and for consequential relief.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No.12622
Bombay Castle, 30th July 1952.

Read Government Resolution, Legal Department No.4330 dated the 29th March 1950.

Letter from the District Government Pleader, Dharwar

In the Court of the Civil Judge (Senior Division), Hubli. Civil Suit No.97 of 1948 Dattatraya Venkatesh Kulkarni, minor by his next friend Govind Shrinivas Kulkarni) ... Plaintiff. Vs. 1. The Government of the Province of Bombay; 2. Rangrao Swamirao Kulkarni.) Defendants.	No.550 dated the 4th July 1952, forwarding copy of

judgment and stating that Civil Appeal No.314 of 1949 in the Dharwar suit noted in the margin was decided by the Assistant Judge on 23rd June 1952, when the following order was passed:-

"Appeal is dismissed. Appellant's next friend to bear the costs of the respondents in one set besides his own."

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

original. R Katarki

R.T. Katarki,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Dharwar,
The Secretary Bombay Revenue Tribunal, Bombay,
The District Government Pleader, Dharwar.

KUP.

Issued - cop 30/7

Subd for opn
AC
29/7
D.S. (Civil)

Subito aprire cosone
file in ~~Atto~~ 2/50.
~~He~~
31/7
~~Ec~~ CMS Jue
31-7